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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
Amendment of the Commission's) GEN Docket No. 90-314
Rules To Establish New Personal) RM-7140, RM-7175,
Communications Services) RM-7618

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**COMMENTS ON PETITION FOR PARTIAL RECONSIDERATION OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA") hereby submits comments on its Petition for Partial Reconsideration filed July 25, 1994, in the above-captioned docket.¹ PCIA offers the following to further explain and clarify its proposals for requiring parties involved in the deployment of new 2 GHz Personal Communications Services ("PCS") to "participate in reasonable arrangements for sharing the costs of relocating incumbent microwave links."² As detailed in its Petition, PCIA urges the Commission to adopt its proposed cost sharing mechanisms to facilitate the deployment of PCS systems. However, consideration of this issue should not be permitted to delay either the PCS auctions or the licensing process.

¹ See FCC Public Notice, 59 Fed. Reg. 4176 (August 15, 1994).

² PCIA Petition at 1 (footnote omitted).

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The PCIA cost sharing plan is predicated on three basic principles:

- First, no PCS interest would be under any obligation to make any cost sharing payments for the relocation of a microwave system unless that entity's operations would have caused interference to the system's link path but for its prior relocation.
- Second, a PCS interest whose operations were benefitted by a relocation would be obligated to pay only a pro rata share of the documented relocation costs, excluding premiums or upgrades, to the party or parties who incurred those costs.
- Third, the obligation to pay would not arise until the time that interference would have been caused.³

PCIA noted that there were a number of options available to the Commission to institute such a cost sharing requirement, including the adoption of general rules establishing the basic requirements together with a policy statement explaining their application to particular situations and arrangements.⁴ To assist the Commission and other interested parties to understand PCIA's cost sharing proposal and to further evaluate its implications for the microwave relocation process, PCIA offers the following set of recommended implementation guidelines for review.

³ PCIA Petition at 5-6.

⁴ Id. at 7.

PCIA recommends that the following guidelines be utilized to apply cost sharing requirements in the absence of any other agreements between affected PCS interests.

1. **Scope.** The intent of these guidelines is to ensure that those PCS interests who benefit from the relocation of incumbent microwave radio links share the cost of those relocations. Benefitted parties are strongly urged to negotiate appropriate cost sharing agreements to implement FCC requirements. Cost sharing will be mandated in the following cases:
 - A. All co-channel interference cases: Cost sharing would be expected in all cases where a PCS interest's allocated spectrum overlaps the microwave incumbent's licensed frequency in a market.
 - B. Some adjacent channel interference cases: Cost sharing would be expected only where a PCS interest in an adjacent block whose operations would interfere with a microwave system's non-overlapping licensed frequency relocates that microwave link prior to action by the co-channel PCS interest. This limitation is recommended because the potential number of adjacent channel interference conditions is high and the determination of derived benefit is a complex and an arguable issue. Therefore, a PCS interest that relocates a link in another's block due to adjacent channel interference is entitled to reimbursement, but PCS interests are not otherwise entitled to reimbursement from other PCS interests who would have interfered with a microwave link solely due to adjacent channel interference.⁵
2. **Definition.** For convenience, the term "market" is used in this document to refer to the Rand McNally BTA or MTA defined areas, or if regulatory approval is given, a sub-area of a BTA or MTA.

⁵ See Attachment 1 - Cases for Which Cost Sharing Is Recommended.

3. **Interference Determination.** A PCS interest is obligated to participate in cost sharing when that entity would have caused interference to a microwave link but for its relocation. This will require coordination between PCS interests. The determination of whether interference would have occurred is to be in accordance with Section 24.237 of the FCC's rules.⁶
4. **Individual Link Analysis.** Cost sharing obligations attach on a link-by-link, rather than system-by-system, basis. Thus, a cost sharing arrangement will be needed for each eligible link in a system.
5. **Documentation.** A PCS interest who is asked to make a cost sharing payment has the right to receive detailed cost documentation and a summary of the incumbent's relocated (or to be relocated) link(s) from the PCS interest who seeks reimbursement. (See Attachment 2 - Sample Invoice for Cost Sharing Reimbursement and Attachment 3 - Sample Existing Link Summary Document.)
6. **Pro Rata Cost of Comparable Facilities Only.** A PCS service provider's obligation to provide reimbursement should not exceed its pro rata share of total expenses incurred in relocating a microwave link. Only costs related to providing comparable telecommunications facilities for the incumbent microwave licensee will be considered. In the case of a single cash settlement, only the cost estimated for a comparable system, as derived from the summary of the incumbent's relocated (or to be relocated) link(s) documentation, is considered eligible for

⁶ 47 C.F.R. § 24.237(a). All licensees are required to coordinate their frequency usage with co-channel or adjacent channel incumbent fixed microwave licensees in the 1850-1990 MHz band. Coordination must occur before initiating operations from any base station. Problems that arise during the coordination process are to be resolved by the parties to the coordination. Licensees are required to coordinate with all users possibly affected, as determined by Appendix E of the Memorandum Opinion and Order, GEN Docket No. 90-314, FCC 94-144 (June 13, 1994); TIA Telecommunications System Bulletin 10-F, "Interference Criteria for Microwave Systems," May 1994 (TSB10-F); or an alternative method agreed to by the parties.

cost sharing. (See Attachment 4 - Examples of Reimbursement Opportunities.)

7. **Trigger Event.** A PCS interest's payment obligation would arise either (1) at the "trigger event" that signifies when the PCS interest would have caused interference to the microwave link but for its relocation, or (2) after the receipt of detailed cost and existing system documentation in the case that such information was not made available prior to the "trigger event," whichever is later.

The "trigger event" is the determination that interference would have occurred based on 47 C.F.R. Section 24.237.

8. **Responsibility for Identifying Sharing Opportunities.** The amount of costs shared between parties will be pro-rated on a link-by-link basis. The party or parties who have negotiated relocation and cost sharing agreements are responsible for identifying other parties that may later benefit from that original relocation. (See Attachment 4.)
9. **Multiple PCS Beneficiaries.** In the case where two or more PCS interests are attempting to, or are required to, relocate an incumbent's link, then it is recommended that the PCS interests participate in a cost sharing arrangement once they become aware of each other's desire to relocate that link. This will allow each of the PCS service provider's microwave relocation requirements to be addressed, a single relocation agreement with the incumbent to be reached, and an equitable allocation of costs to the PCS interests to be achieved.
10. **Good Faith Negotiations/ADR.** PCS interests are required to engage in good faith negotiations for cost sharing and are strongly encouraged to make use of mediation/arbitration techniques prior to filing any FCC complaint arising from disputes under the cost sharing plan. The Alternative Dispute Resolution ("ADR") process⁷ should be followed. It is recommended that the mediator/arbitrator assign responsibility for costs of the

⁷ See Use of the Alternative Dispute Resolution Procedures in Commission Proceedings and Proceedings in Which the Commission Is a Party, 6 FCC Rcd 5669 (1991).

mediation/arbitration process to the parties involved, as appropriate.

11. **Sunset.** This cost sharing requirement is effective for 10 years from the date of the award of the last broadband PCS license. Any cost sharing reimbursement request received by that date is eligible for cost sharing. Any requests received after that date remain negotiable among the affected PCS interests.

PCIA believes that adoption of its petition for reconsideration with the foregoing clarifications would inure to the benefit of all PCS and microwave interests while expediting the availability of these important new services to the public. Accordingly, PCIA urges the Commission to promulgate rules implementing its proposed cost sharing requirements, as set out herein.

Respectfully submitted,

THE PERSONAL COMMUNICATIONS
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ATTACHMENT 1

CASES FOR WHICH COST SHARING IS RECOMMENDED

The following are examples of cases for which cost sharing is recommended.

1. An incumbent's licensed bandwidth for a given link at 1855-1955 MHz is wholly contained in two PCS interest's blocks. For example, the link is situated in licensed Blocks A and B. In this case, the incumbent's licensed bandwidth will equally fall in each PCS interests' block.
2. An incumbent's licensed bandwidth for a given link at 1865-1945 MHz overlaps two PCS interest's blocks. For example, the link overlaps licensed Blocks A and D. Since the Part 94 1850-1990 MHz microwave spectrum has an allocated bandwidth of 10 MHz for each channel in this frequency pair, and the standard T/R separation is 80 MHz, in this case, the incumbent's licensed bandwidth will equally overlap both PCS interests' blocks.
3. An incumbent's licensed bandwidth for a given link at 1865-1915 MHz overlaps two or more PCS interests' blocks. For example, the link overlaps licensed Blocks A and D and the unlicensed spectrum administered by UTAM. In this case, the incumbent's licensed bandwidth will not equally overlap all PCS interests' blocks, i.e., Blocks A and D are overlapped 5 MHz each, and the unlicensed block is overlapped by 10 MHz.
4. An incumbent's licensed bandwidth for a given link at 1855-1935 MHz is wholly contained in a PCS interest's Block A. A second link at 1875-1955 MHz, in the same incumbent's system, is wholly contained in another PCS interest's Block B. In this case, the incumbent's licensed bandwidth is co-channel to and will fall in each respective PCS interests' block. Each PCS interest will benefit from the relocation of the respective link within its block.

In any of the above cases, the microwave link may be wholly contained within one market or the link ends could be physically located in two separate markets.

5. An incumbent's licensed bandwidth for a given link at 1855-1935 MHz is wholly contained in two PCS interests' blocks in separate MTAs. For example, the link is situated in licensed Block A and each end of the link falls in an adjacent market. In this case, the incum-

bent's licensed bandwidth will equally fall in each PCS interests' block and market.

6. An incumbent's licensed bandwidth for a given link at 1855-1935 MHz is wholly contained in another PCS interests' block and is one link in a multi-link system. No interference has or will occur in the relocating PCS interest's block. For example, the link is situated in licensed Block A in the adjacent market of the other PCS interest. In this case, the incumbent's licensed bandwidth is situated only in the other PCS interest's block and that interest is the only beneficiary.
7. Where a microwave link is situated in a licensed block and entirely contained within the relocating PCS interest's market and interference exists between that link and another co-channel block in another market, a cost sharing obligation may also arise between the relocating PCS interest and a second PCS interest only if the relocating PCS interest has no other opportunities to cost share as shown in Examples 1 through 6.

ATTACHMENT 2

SAMPLE INVOICE FOR COST SHARING REIMBURSEMENT

Following is a recommended format for invoices that will be submitted to obtain reimbursement of a share of the costs for relocation of incumbent links. It is also recommended that detailed item descriptions of each of these items be included as backup for the invoice. It is recommended that this form be used in all cases, including when a single cash settlement is made.

Invoice for Cost Sharing

1. Frequency Coordination
 - frequency study
 - prior coordination
 - license application preparation and fees
2. Engineering Services
 - system design
 - path survey
3. Administrative/Legal Services
 - negotiation
 - legal
4. Hardware
 - radio and radio subsystems
 - antenna and antenna subsystems
 - civil engineering
 - tower work/replacement
 - antenna waveguide
 - power plant upgrades
 - support system upgrades
 - fault alarm
 - orderwire
 - HVAC
5. Construction Services
 - construction services and fees
 - project management
 - site acquisition services and fees
6. Installation and Test

ATTACHMENT 3

SAMPLE EXISTING LINK SUMMARY DOCUMENT

The following is a recommended format for summarizing an incumbent's existing system. This should be submitted along with the invoice when a request for cost sharing is made.

EXISTING LINK(S) SUMMARY

1. Radio Systems

- manufacturer
- model
- capacity
- frequency
- transmit power
- stability
- spares
- multiplex

2. Tower

- manufacturer
- construction date and any reinforcements conducted-
height AGL
- designed capacity loading
- markings and requirements

3. Antenna Systems

- numbers of antennas installed
- type/model of antennas
- number of feedlines and type

4. Power Plant

- AC/DC capacity in amp hours
- generator plant
- type of battery plant
- age of battery plant

5. Environment

- shelter size
- HVAC
- on board fuel systems

6. Monitoring Systems

- orderwire systems
- fault alarm reporting
- tower monitoring systems

ATTACHMENT 4

EXAMPLES OF REIMBURSEMENT OPPORTUNITIES

Depending on the particular interference situation, the relocating provider might be eligible for reimbursement from the other provider in an amount ranging up to 100% of the relocation cost. Some examples of possible reimbursement opportunities available to a PCS interest that relocates an incumbent's link are provided below.

1. One link of a multi-link system is co-channel to another PCS interest's block in the same market, but is not co-channel to the relocating interest's block. The relocating interest is eligible for 100% reimbursement from the other interest because the benefit is to that interest only. (See Attachment 1, examples 4 and 6.)
2. One link is co-channel to both the relocating PCS interest's block and another interest's block. The relocating interest is eligible for 50% reimbursement from the other interest because the benefit is equal to both interests. (See Attachment 1, examples 1, 2, and 5.)
3. A link is situated in licensed Block A at 1855-1935 MHz and entirely contained within the relocating PCS interest's market (or another interest's market) and interference exists between that link and another Block A PCS interest in another market. The relocating interest is eligible for 50% reimbursement from the other interest. (See Attachment 1, example 7.)
4. The relocating interest relocates a link due to adjacent channel interference whether it is contained within that market or not. The second PCS interest is identified to have co-channel interference with that link. The relocating interest is then eligible for 75% reimbursement from the other interest.

In the event that two or more PCS interests are identified at the same time as being obligated to cost share, then an equitable allocation of benefits should be negotiated. Cost sharing may continue on a pro rata basis up to the point where the PCS interests find that it is no longer cost effective to seek reimbursement.